

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	
)	
Patrick J. Acker)	Administrative Order
Pewaukee, Wisconsin)	
)	EPA-5-01-113(a) -WI-03
Proceeding Under Sections)	
113(a)(1) of the Clean Air)	
Act, 42 U.S.C. §§ 7413(a)(1))	
_____)	

Statutory Authority

The following order is issued pursuant to Section 113(a)(1) of the Clean Air Act (Act), 42 U.S.C. § 7413(a), against Respondent, Patrick J. Acker of Pewaukee, Wisconsin. This order is issued, by lawful delegation, by the Director of the Air and Radiation Division of Region 5, United States Environmental Protection Agency (U.S. EPA).

Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(3)(B), provides in relevant part that "whenever, on the basis of any information available to the Administrator [of U.S. EPA], the Administrator finds that any person has violated, or is in violation of ... any ... requirement or prohibition of ... subchapter I [of the Clean Air Act] ..., the Administrator may ... issue an order requiring such person to comply with such requirement or prohibition."

Statutory and Regulatory Background

1. The Administrator of U.S. EPA may promulgate regulations establishing National Emission Standards for Hazardous Air Pollutants (NESHAP) under Section 112 of the Act, 42 U.S.C. § 7412.

2. Under Section 112 of the Act, the Administrator promulgated the NESHAP for asbestos emissions at 40 C.F.R. Section 61, Subpart M. The NESHAP for asbestos emissions applies to the emission, handling, and disposal of asbestos.

3. The NESHAP, at 40 C.F.R. § 61.145(a), requires the owner

or operator of an asbestos demolition or renovation activity to thoroughly inspect the area for the presence of asbestos prior to commencing the demolition or renovation activity.

4. The NESHAP, at 40 C.F.R. § 61.145(b), requires the owner or operator of an asbestos demolition or renovation activity to provide the U.S. EPA with written notice of its intention to renovate at least ten (10) working days before asbestos stripping by providing the Wisconsin Department of Natural Resources with written notice of intention to renovate.

5. The NESHAP, at 40 C.F.R. § 61.145(c)(1), requires the owner or operator of an asbestos demolition or renovation activity to remove all regulated asbestos-containing materials from the facility being renovated before any activity begins that would break up, dislodge, or similarly disturb the material.

6. The NESHAP, at 40 C.F.R. § 61.145(c)(6), requires the owner or operator of an asbestos demolition or renovation activity to adequately wet all regulated asbestos-containing materials and ensure that the material remain wet until collected and contained or treated in preparation for disposal.

7. The NESHAP, at 40 C.F.R. § 61.145(c)(8), provides that no regulated asbestos-containing material shall be stripped, removed or otherwise handled or disturbed at a facility that is subject to the requirements of 40 C.F.R. § 61.145 unless at least one on-site representative (such as a foreman or management-level person or other authorized representative) who is properly trained in the provisions of the asbestos NESHAP and the means of complying with such provisions, is present.

8. The NESHAP, at 40 C.F.R. § 61.150(a)(1), requires the owner or operator of an asbestos demolition or renovation activity to seal the asbestos containing material in leak-tight containers while wet.

9. The NESHAP, at 40 C.F.R. § 61.150(b), requires the owner or operator of an asbestos demolition or renovation activity to deposit all asbestos containing waste material as soon as practical at an U.S. EPA approved disposal site.

10. Under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), the Administrator of U.S. EPA may issue an order requiring compliance to any person who has violated or is violating the NESHAP regulations. The Administrator has delegated this authority to the Director of the Air and Radiation Division.

Findings

11. Respondent, Patrick J. Acker, is employed as the Buildings and Grounds Director of Pewaukee High School, located at 510 Lake Street, Pewaukee, Waukesha County, Wisconsin.

12. Respondent was an operator of a "renovation" activity within the meaning of 40 C.F.R. § 61.141 at Pewaukee High School in August of 1997. This renovation activity included removal of floor tiles and mastic, which became friable or which had a high probability of becoming crumbled, pulverized, or reduced to powder by the forces expected to act on the floor tiles and mastic in the course of the renovation. Laboratory analysis of samples taken from the floor tiles and mastic indicated that the samples contained more than one percent asbestos. Respondent gave orders to strip, remove, dislodge, cut, drill, or disturb in the renovation activity at the school building at least 80 linear meters (260 linear feet) of pipe insulation, or at least 15 square meters (160 square feet) on other facility components, or 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously. Therefore, Respondent is subject to the NESHAP for asbestos emissions at 40 C.F.R. Part 61, Subpart M.

13. Respondent violated the NESHAP for asbestos emissions at 40 C.F.R. § 61.145(a) by failing to thoroughly inspect the area of the Pewaukee High School where the renovation activity was to occur for the presence of asbestos prior to commencing the renovation activity referred to above.

14. Respondent violated the NESHAP for asbestos emissions at 40 C.F.R. § 61.145(b) by failing to provide the U.S. EPA with written notice of his intention to renovate at least ten (10) working days before asbestos stripping or removal work or any other activity began.

15. Respondent violated the NESHAP for asbestos emissions at 40 C.F.R. § 61.145(c)(1) by failing to remove all regulated asbestos-containing materials from the school building being renovated before any activity began that would break up, dislodge, or similarly disturb the material.

16. Respondent violated the NESHAP for asbestos emissions at 40 C.F.R. § 61.145(c)(6) by failing to adequately wet all regulated asbestos-containing materials and ensure that the material remained wet until collected and contained or treated in preparation for disposal.

17. Respondent violated the NESHAP for asbestos emissions at 40 C.F.R. § 61.145(c)(8) by failing to have present during the renovation at least one on-site representative (such as a foreman or management-level person or other authorized representative) who was properly trained in the provisions of the asbestos NESHAP and the means of complying with such provisions.

18. Respondent violated the NESHAP for asbestos emissions at 40 C.F.R. § 61.150(a)(1) by failing to seal the asbestos containing material in leak-tight containers while wet.

19. Respondent violated the NESHAP for asbestos emissions at 40 C.F.R. § 61.150(b) by failing to deposit all asbestos-containing waste material as soon as was practical at an U.S. EPA approved disposal site.

IT IS HEREBY ORDERED THAT:

20. Respondent shall comply with Section 112 of the Act, 42 U.S.C. § 7412, and the NESHAP regulations for asbestos emissions at 40 C.F.R. Section 61, Subpart M.

21. Prior to performing any further demolition or renovation activities covered by Section 112 of the Act, 42 U.S.C. § 7412, and the NESHAP regulations for asbestos emissions at 40 C.F.R. Section 61, Subpart M, Respondent shall:

a. thoroughly inspect the facility for the presence of asbestos or asbestos-containing material prior to the commencement of any demolition or renovation activity;

and

b. submit a notice of intent to demolish or renovate the facility to the appropriate State and regional contacts (as required by the State)

22. Failure to comply with this Order may subject Respondent to penalties of up to \$27,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413.

23. Nothing contained in this Order shall affect the responsibility of Respondent to comply with all applicable Federal, State or local laws or regulations.

24. Nothing in this Order shall be construed to prevent or limit U.S. EPA's authority to collect penalties and pursue

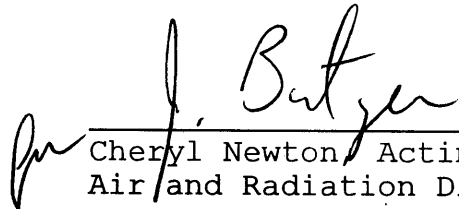
appropriate relief under Sections 113(b) and 113(d) of the Act, 42 U.S.C. §§ 7413(b) and 7413(d).

25. U.S. EPA may use any information submitted under this Order in an administrative, civil or criminal action.

26. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation.

27. This Order is effective on the date of signature by the Acting Director of the Air and Radiation Division.

February 13 2001
Date


Cheryl Newton, Acting Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Shanee Rucker, certify that I sent the Administrative Order, EPA Order No. EPA-5-01-113(a)-WI-03, by Certified Mail, Return Receipt Requested, to:

Patrick J. Acker
314 Park Avenue
Pewaukee, Wisconsin 53072

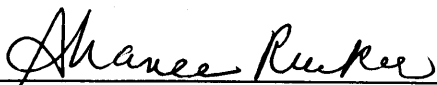
William S. Roush, Jr.
Davis & Kuelthau, S.C.
111 East Kilbourn, Suite 1400
Milwaukee, Wisconsin 53202-6613

I also certify that I sent a copy of the Administrative Consent Order, EPA Order No. EPA-5-01-113(a)-WI-03, by First Class Mail to:

Lloyd Eagan, Director
Bureau of Air Management
Wisconsin Department of Natural Resources
101 S. Webster Street
P.O. Box 7921
Madison, Wisconsin 53707

Lakshmi Sridharan
Wisconsin Department of Natural Resources
Southeast Regional Office
2300 North Martin Luther King Drive
P.O. Box 12436
Milwaukee, Wisconsin 53212

on the 14th day of February 2001.


Shanee Rucker, Secretary
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7099 3400 0000 9592 4090